

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 STRIKE 3 HOLDINGS, LLC,

11 Plaintiff,

12 vs.

13 JOHN DOE subscriber assigned IP address
14 98.242.52.89,

15 Defendant.

Case No.: 2:21-cv-01165-TLN-CKD

**[PROPOSED] ORDER ON UNOPPOSED
APPLICATION FOR LEAVE TO
SERVE THIRD PARTY SUBPOENA
PRIOR TO A RULE 26(f)
CONFERENCE**

16 **THIS CAUSE** came before the Court upon Plaintiff's Unopposed Application for Leave
17 to Serve a Third Party Subpoena Prior to a Rule 26(f) Conference (the "Application"), and the
18 Court being duly advised does hereby:

19 **FIND, ORDER AND ADJUDGE:**

20 1. Plaintiff's Unopposed Application for Leave to Serve a Third Party Subpoena
21 Prior to a Rule 26(f) Conference is GRANTED on the terms of this order.

22 2. Plaintiff may engage in limited expedited discovery to establish the identity of the
23 owner of the IP address identified in the complaint by serving a subpoena on the ISP provider
24 of the subject IP address.

25 3. The ISP shall be served with a subpoena seeking only the true name and address
26 of the person or entity to whom the subject IP address is assigned.

1 4. Once plaintiff has obtained the actual identity of the person or entity associated
2 with the subject IP address, it shall serve a copy of this order on that person or entity.

3 5. No formal service of process shall be permitted absent further order of this court.

4 6. The parties—both plaintiff and the potential defendant—are hereby invited to
5 attend an informal conference before the undersigned for the following purposes:

- 6 a. To set a schedule that will allow the defendant an opportunity to file a motion
7 to quash the subpoena, if there are true and adequate grounds therefor; and
8 b. To establish procedures for service of process or waiver thereof.

9 7. This informal conference may take place via telephone or Zoom. The parties
10 should contact the courtroom deputy, Judy Streeter, at jstreeter@caed.uscourts.gov to arrange
11 an informal conference if they wish to schedule one.

12 8. The parties are advised that attendance at such a conference is voluntary and will
13 not itself constitute a waiver of service of the complaint, or result in a finding of “appearance”
14 in the litigation, unless the potential defendant agrees to waive service, or the case is resolved
15 and a settlement is placed on the record.

16 9. Not later than 45 days from the date of this order, plaintiff shall file a status
17 report indicating:

- 18 a. Whether service of this order has been effectuated as directed;
19 b. Whether defendant has agreed to attend an informal conference; an
20 c. If applicable, whether the parties seek a telephonic or in person
21 conference.
22 d. The status report shall continue to identify the defendant by John or Jane
23 Doe at the subject IP address.

24 10. After receipt of the status report, the court will schedule an informal conference,
25 if necessary.

1 11. A decision by the person identified as the owner of the subject IP address not to
2 attend an informal conference will lead to an order substituting the identified defendant by
3 name, permitting ordinary service of process, and commencement of the litigation.

4 12. Plaintiff is cautioned that, until permission is given by the court, it is not to
5 reveal the identity of the defendant in or out of court.

6 13. Nothing in this order precludes plaintiff and defendant from reaching a
7 settlement without court participation before any informal conference is held or formal service
8 of process is effectuated.

9 **DONE AND ORDERED.**

10 Dated: _____

By: _____
United States Magistrate Judge
Hon. Carolyn K. Delaney